

- (1) Did claimant prove he sustained an accidental injury that arose out of and in course of his employment on May 20, 1997?
- (2) Did claimant serve respondent with a timely written claim for compensation?
- (3) Is claimant entitled to medical treatment?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) Claimant testified he felt pain and discomfort in his right knee as he was performing his regular job activities as a maintenance mechanic on May 20, 1997. Claimant said he was kneeling on both knees and twisted around to pick up a part and felt the pain. Claimant testified that before this incident he had no pain and discomfort in the right knee. Claimant immediately notified his supervisor of the injury, and the supervisor completed an Injury Investigation Form. Also, before he completed his shift on that particular night, claimant reported the knee injury to the company nurse. The company nurse then set him an appointment for him to see the company doctor.

After the May 20, 1997, incident, claimant continued to work but testified his right knee remained symptomatic and actually worsened as he continued to work. Respondent provided claimant with medical treatment for the right knee through the company physician, Dirk T. Hutchinson, M.D.; Salina, Kansas, orthopedic surgeon Milo G. Sloo, III, M.D.; and Wichita, Kansas, orthopedic surgeon Naomi N. Shields, M.D.

Dr. Shields was the last physician who treated claimant before the April 23, 1999, preliminary hearing. Dr. Shields first saw claimant on August 11, 1998, and referred him for physical therapy. Finally, Dr. Shields had claimant undergo an MRI examination on October 6, 1998. The MRI examination revealed a tear in the medial and lateral meniscus of claimant's right knee. At that time, Dr. Shield recommended arthroscopic surgery. But a few days after respondent's insurance carrier received the MRI report, it decided to deny claimant's claim indicating the meniscus tears were not related to his work.

Dr. Shield's testified by deposition in this matter on April 22, 1999. She declined to express an opinion on whether or not claimant sustained the right knee meniscus tears in the incident claimant described at work on May 20, 1997. She indicated the tears were degenerative in nature and she had no opinion whether the May 20, 1997, incident at work either caused or aggravated the meniscus tears. She did opine that one incident could have caused the degenerative meniscus tears to become symptomatic. But only one event would not necessarily caused the tears.

Respondent argues that claimant failed to prove his right knee meniscus tears are related to his work. Respondent contends the tears are degenerative, and the tears, as noted by Dr. Shields, could have occurred at any time while claimant was doing any type of activity. Additionally, the respondent argues that the incident that claimant described at work on May 20, 1997, could not have caused the meniscus tears.

The Appeals Board finds the preliminary hearing record as a whole proves it is more probably true than not that claimant on May 20, 1997, at work, either suffered the right knee meniscus tears or aggravated a preexisting condition causing the pain and discomfort in

claimant's right knee. Claimant testified that, before the May 20, 1997, incident at work, he had no pain and discomfort in his right knee. Thereafter, the pain and discomfort continued and worsened.

(2) Respondent also raised timely written claim as an issue but did not argue the issue in his brief. The preliminary hearing record contains a copy of a written claim sent by claimant's attorney to respondent on September 25, 1998. On that date, respondent was providing claimant with medical treatment for the right knee. As Dr. Shield's medical records indicate, she last saw claimant on September 22, 1998, and at her direction, claimant had the MRI examination on October 6, 1998. Accordingly, respondent was served with a timely written claim for compensation within 200 days from the last payment of compensation as required by K.S.A. 44-520a.

(3) The final issue respondent raised in his application for review is whether claimant is entitled to medical care. This issue is not an issue that the Appeals Board has jurisdiction to review from a preliminary hearing order. The preliminary hearing statute gives the Administrative Law Judge the authority to grant or deny medical compensation. Accordingly, at this juncture of the proceeding, the Appeals Board does not have jurisdiction to review the issue of whether or not claimant is entitled to medical care. See K.S.A. 1998 Supp. 44-534a.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bruce E. Moore's May 3, 1999, preliminary hearing Order, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1999.

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BOARD MEMBER

c: Michael J. Unrein, Topeka, KS  
C. Stanley Nelson, Salina, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director